IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3778 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SHARIFKHAN NURDULKHAN PATHAN

Appearance:

1. Special Civil Application No. 3778 of 2002

MS MANISHA LAVKUMAR, AGP, for Petitioner No. 1

MR RM CHHAYA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 01/05/2002

ORAL JUDGEMENT

Rule. Mr RM Chhaya waives service of Rule for the respondents.

2. This petition filed by the State of Gujarat under

Articles 226 and 227 of the Constitution challenges the judgment and order dated 4-1-2001 delivered by the Gujarat Revenue Tribunal in Revision Application No.TEN.BA.79/98 dismissing the revision application of the State Government and confirming the order passed by the Deputy Collector (Land Reforms Appeals), Kheda by which the Deputy Collector granted the application of the present respondent for converting the land in question bearing Survey Nos. 1518 and 1517 of Village Umreth of Anand Taluka from new tenure into old tenure.

3. The State Government has challenged the aforesaid orders mainly on the ground that the Deputy Collector could not and ought not to have exercised his powers under section 76A of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as `the Act') after a gross and unreasonable delay of 25 years. The Mamlatdar and Agricultural Lands Tribunal had passed order dated 10-12-1968 in Tenancy Case No.32-G-991. The land was granted to the tenant as a new tenure land subject to restrictions regarding transfer and payment of premium under section 43 of the Act. Those conditions came to be challenged by the successor in interest of the grantee before the Deputy Collector (Land Reforms -Appeals) in February 1993 that is after a delay of more than 24 years. The Deputy Collector held the conditions as illegal and null and void on the ground that the tenant was entitled to purchase the land as old tenure land.

4. The learned AGP has submitted that the Deputy Collector ought not to have exercised his revisional powers after gross and unreasonable delay of 24 years and that the matter is now covered by the decision of this Court dated 18-3-2002 in Special Civil Application Nos.3340 and 3350 of 2002.

5. On the other hand, Mr Chhaya for the respondents has submitted that the respondents have a good case on merits and that even as per the aforesaid decision dated 18-3-2002, when the occupants have any rights under the recent Government resolutions regarding conversion of new tenure land into old tenure land, it is open to the occupants to move the competent authority for appropriate reliefs under those Government resolutions.

6. Having heard the learned counsel for the parties, it appears to the Court that the controversy raised in this petition is squarely covered by the aforesaid decision dated 18-3-2002 in Special Civil Application Nos. 3340 and 3350 of 2002 where the Court has held that

even if the order passed by the Mamlatdar in the remote past was contrary to law, such an order was required to be challenged within reasonable time and that such gross delay of 20 years or 30 years cannot be overlooked. Hence, the impugned order dated 31-5-1993 passed by the Deputy Collector in Tenancy Appeal No.37 of 1993 and the order dated 4-1-2001 of the Tribunal confirming the said order are required to be quashed and set aside.

7. At the same time, if the occupants have any right under the recent Government resolutions, regarding conversion of new tenure lands into old tenure lands, the occupants have a right to move the competent authority for appropriate reliefs under those Government resolutions.

8. It is accordingly clarified that without disturbing the order dated 10-12-1968 passed by the Mamlatdar and ALT, Kheda in Tenancy Case No.32-G-991, if the respondents herein have any right under any recent Government resolutions to apply before the competent authority for conversion of new tenure land into old tenure land, the respondents will be at liberty to move the competent authority for such relief under such Government resolutions.

9. Subject to the aforesaid liberty reserved to the respondents, this petition is allowed and the impugned orders of the Deputy Collector and the Revenue Tribunal at Annexures `B' and `C' to the petition are hereby quashed and set aside and the order dated 10-12-1968 of the Mamlatdar and ALT is restored.

If and when the respondents make such an application before the respondent authority, the same shall be considered in accordance with law.

It is clarified that the Court has not gone into the merits of that controversy.

10. Rule is made absolute with no order as to costs.

(M.S. Shah,J)
zgs/-